

(e) *Additional components.* Each method must include any additional components necessary to ensure effective cooperation and coordination among, and the lead agency's general supervision (including monitoring) of, EIS providers (including all public agencies) involved in the State's early intervention service programs.

(Authority: 20 U.S.C. 1435(a)(10), 1437(a)(2), 1440(b))

PAYOR OF LAST RESORT & SYSTEM OF PAYMENTS PROVISIONS—USE OF INSURANCE, BENEFITS, SYSTEMS OF PAYMENTS, AND FEES

**§ 303.520 Policies related to use of public benefits or insurance or private insurance to pay for Part C services.**

(a) *Use of public benefits or public insurance to pay for Part C services.*

(1) A State may not use the public benefits or insurance of a child or parent to pay for part C services unless the State provides written notification, consistent with § 303.520(a)(3), to the child's parents, and the State meets the no-cost protections identified in paragraph (a)(2) of this section.

(2) With regard to using the public benefits or insurance of a child or parent to pay for part C services, the State—

(i) May not require a parent to sign up for or enroll in public benefits or insurance programs as a condition of receiving part C services and must obtain consent prior to using the public benefits or insurance of a child or parent if that child or parent is not already enrolled in such a program;

(ii) Must obtain consent, consistent with §§ 303.7 and 303.420(a)(4), to use a child's or parent's public benefits or insurance to pay for part C services if that use would—

(A) Decrease available lifetime coverage or any other insured benefit for that child or parent under that program;

(B) Result in the child's parents paying for services that would otherwise be covered by the public benefits or insurance program;

(C) Result in any increase in premiums or discontinuation of public

benefits or insurance for that child or that child's parents; or

(D) Risk loss of eligibility for the child or that child's parents for home and community-based waivers based on aggregate health-related expenditures.

(iii) If the parent does not provide consent under paragraphs (a)(2)(i) or (a)(2)(ii) of this section, the State must still make available those part C services on the IFSP to which the parent has provided consent.

(3) Prior to using a child's or parent's public benefits or insurance to pay for part C services, the State must provide written notification to the child's parents. The notification must include—

(i) A statement that parental consent must be obtained under § 303.414, if that provision applies, before the State lead agency or EIS provider discloses, for billing purposes, a child's personally identifiable information to the State public agency responsible for the administration of the State's public benefits or insurance program (e.g., Medicaid);

(ii) A statement of the no-cost protection provisions in § 303.520(a)(2) and that if the parent does not provide the consent under § 303.520(a)(2), the State lead agency must still make available those part C services on the IFSP for which the parent has provided consent;

(iii) A statement that the parents have the right under § 303.414, if that provision applies, to withdraw their consent to disclosure of personally identifiable information to the State public agency responsible for the administration of the State's public benefits or insurance program (e.g., Medicaid) at any time; and

(iv) A statement of the general categories of costs that the parent would incur as a result of participating in a public benefits or insurance program (such as co-payments or deductibles, or the required use of private insurance as the primary insurance).

(4) If a State requires a parent to pay any costs that the parent would incur as a result of the State's using a child's or parent's public benefits or insurance to pay for part C services (such as co-payments or deductibles, or the required use of private insurance as the primary insurance), those costs must be identified in the State's system of

payments policies under §303.521 and included in the notification provided to the parent under paragraph (a)(3) of this section; otherwise, the State cannot charge those costs to the parent.

(b) *Use of private insurance to pay for Part C services.* (1)(i) The State may not use the private insurance of a parent of an infant or toddler with a disability to pay for part C services unless the parent provides parental consent, consistent with §§303.7 and 303.420(a)(4), to use private insurance to pay for part C services for his or her child or the State meets one of the exceptions in paragraph (b)(2) of this section. This includes the use of private insurance when such use is a prerequisite for the use of public benefits or insurance. Parental consent must be obtained—

(A) When the lead agency or EIS provider seeks to use the parent's private insurance or benefits to pay for the initial provision of an early intervention service in the IFSP; and

(B) Each time consent for services is required under §303.420(a)(3) due to an increase (in frequency, length, duration, or intensity) in the provision of services in the child's IFSP.

(ii) If a State requires a parent to pay any costs that the parent would incur as a result of the State's use of private insurance to pay for early intervention services (such as co-payments, premiums, or deductibles), those costs must be identified in the State's system of payments policies under §303.521; otherwise, the State may not charge those costs to the parent.

(iii) When obtaining parental consent required under paragraph (b)(1)(i) of this section or initially using benefits under a child or parent's private insurance policy to pay for an early intervention service under paragraph (b)(2) of this section, the State must provide to the parent a copy of the State's system of payments policies that identifies the potential costs that the parent may incur when their private insurance is used to pay for early intervention services under this part (such as co-payments, premiums, or deductibles or other long-term costs such as the loss of benefits because of annual or lifetime health insurance coverage caps under the insurance policy).

(2) The parental consent requirements in paragraph (b)(1) of this section do not apply if the State has enacted a State statute regarding private health insurance coverage for early intervention services under part C of the Act, that expressly provides that—

(i) The use of private health insurance to pay for part C services cannot count towards or result in a loss of benefits due to the annual or lifetime health insurance coverage caps for the infant or toddler with a disability, the parent, or the child's family members who are covered under that health insurance policy;

(ii) The use of private health insurance to pay for part C services cannot negatively affect the availability of health insurance to the infant or toddler with a disability, the parent, or the child's family members who are covered under that health insurance policy, and health insurance coverage may not be discontinued for these individuals due to the use of the health insurance to pay for services under part C of the Act; and

(iii) The use of private health insurance to pay for part C services cannot be the basis for increasing the health insurance premiums of the infant or toddler with a disability, the parent, or the child's family members covered under that health insurance policy.

(3) If a State has enacted a State statute that meets the requirements in paragraph (b)(2) of this section, regarding the use of private health insurance coverage to pay for early intervention services under part C of the Act, the State may reestablish a new baseline of State and local expenditures under §303.225(b) in the next Federal fiscal year following the effective date of the statute.

(c) *Inability to pay.* If a parent or family of an infant or toddler with a disability is determined unable to pay under the State's definition of inability to pay under §303.521(a)(3) and does not provide consent under paragraph (b)(1), the lack of consent may not be used to delay or deny any services under this part to that child or family.

(d) *Proceeds or funds from public insurance or benefits or from private insurance.*

(1) Proceeds or funds from public insurance or benefits or from private insurance are not treated as program income for purposes of 34 CFR 80.25.

(2) If the State receives reimbursements from Federal funds (*e.g.*, Medicaid reimbursements attributable directly to Federal funds) for services under part C of the Act, those funds are considered neither State nor local funds under § 303.225(b).

(3) If the State spends funds from private insurance for services under this part, those funds are considered neither State nor local funds under § 303.225.

(e) *Funds received from a parent or family member under a State's system of payments.* Funds received by the State from a parent or family member under the State's system of payments established under § 303.521 are considered program income under 34 CFR 80.25. These funds—

(1) Are not deducted from the total allowable costs charged under part C of the Act (as set forth in 34 CFR 80.25(g)(1));

(2) Must be used for the State's part C early intervention services program, consistent with 34 CFR 80.25(g)(2); and

(3) Are considered neither State nor local funds under § 303.225(b).

(Authority: 20 U.S.C. 1432(4)(B), 1435(a)(10), 1439(a))

**§ 303.521 System of payments and fees.**

(a) *General.* If a State elects to adopt a system of payments in § 303.500(b), the State's system of payments policies must be in writing and specify which functions or services, if any, are subject to the system of payments (including any fees charged to the family as a result of using one or more of the family's public insurance or benefits or private insurance), and include—

(1) The payment system and schedule of sliding or cost participation fees that may be charged to the parent for early intervention services under this part;

(2) The basis and amount of payments or fees;

(3) The State's definition of ability to pay (including its definition of income and family expenses, such as extraordinary medical expenses), its definition of inability to pay, and when and how

the State makes its determination of the ability or inability to pay;

(4) An assurance that—

(i) Fees will not be charged to parents for the services that a child is otherwise entitled to receive at no cost (including those services identified under paragraphs (a)(4)(ii), (b), and (c) of this section);

(ii) The inability of the parents of an infant or toddler with a disability to pay for services will not result in a delay or denial of services under this part to the child or the child's family such that, if the parent or family meets the State's definition of inability to pay, the infant or toddler with a disability must be provided all part C services at no cost.

(iii) Families will not be charged any more than the actual cost of the part C service (factoring in any amount received from other sources for payment for that service); and

(iv) Families with public insurance or benefits or private insurance will not be charged disproportionately more than families who do not have public insurance or benefits or private insurance;

(5) Provisions stating that the failure to provide the requisite income information and documentation may result in a charge of a fee on the fee schedule and specify the fee to be charged; and

(6) Provisions that permit, but do not require, the lead agency to use part C or other funds to pay for costs such as the premiums, deductibles, or co-payments.

(b) *Functions not subject to fees.* The following are required functions that must be carried out at public expense, and for which no fees may be charged to parents:

(1) Implementing the child find requirements in §§ 303.301 through 303.303.

(2) Evaluation and assessment, in accordance with § 303.320, and the functions related to evaluation and assessment in § 303.13(b).

(3) Service coordination services, as defined in §§ 303.13(b)(11) and 303.33.

(4) Administrative and coordinative activities related to—

(i) The development, review, and evaluation of IFSPs and interim IFSPs in accordance with §§ 303.342 through 303.345; and